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Letter Ruling 93-14: Classification of a Mutual Fund, Organized Under a "Hub and Spokes" Arrangement, as a Partnership

September 21, 1993

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You represent certain mutual funds (the "Funds"), ("Management"), certain entities to be formed by the Funds and Management in connection with the creation of a "Master Fund Feeder Fund" structure (the "Master Funds") ¹ and any and all future investors in the Master Funds (the "Shareholders"). On behalf of these interested parties, you request a letter ruling that the Master Funds will be treated as partnerships for Massachusetts tax purposes and that the Shareholders will be treated as partners of the Master Funds.

We conclude that the Declaration of Trust for each Master Fund will establish a framework for Shareholder participation in and oversight of each Master Fund so that the Trustees of each Master Fund will be under the control of the Shareholders. Accordingly, we rule that, for Massachusetts tax purposes, each Master Fund will be treated as a partnership under G.L. c. 62, § 17, and that the Shareholders in each Master Fund will be treated as partners of such Master Funds.

I. Facts.

The following is your representation of the facts upon which we base our letter ruling.

A. Description of the Master Fund.

Each Master Fund will be organized as a trust under the law of Massachusetts and will be registered as an open-end investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq. Each Master Fund will be formed to carry on the business of an investment company.

The individual Funds contributing assets to the Master Funds will each receive shares of beneficial interest of the Master Funds, the shares of beneficial interest having a value equal to the value of the assets contributed. Each Master Fund will have one class of shares of beneficial interest, and each share will represent an undivided beneficial interest in the assets of the Master Fund identical to that represented by all other outstanding shares. As in the case of any open-end investment company, the shares of beneficial interest in each Master Fund will be redeemable at any time.

Record ownership of one or more shares of beneficial interest in a Master Fund will entitle Shareholders to a pro rata share (based upon holder's percentage record ownership) of each item of income, gain, loss, deduction and credit generated by the Master Fund. Each such item will be allocated among the Shareholders on a daily basis. Additionally, each Shareholder will be entitled to

a pro rata share of all distributions made by the Master Fund and a pro rata share of all assets of the Master Fund upon liquidation.

Certificates of beneficial interest in a Master Fund will be transferable only with the written consent of the Trustees of the Master Fund and of the holders of two thirds of the beneficial interest in the Master Fund. Further, each Master Fund will terminate in the event of the death or bankruptcy of a Shareholder.

B. Startup and Operation of the Master Fund.

It is anticipated that the initial investors in each Master Fund will be one of the Funds and Management (or one of Management's affiliates). In order to facilitate the creation of each Master Fund, Management will at the outset contribute cash in exchange for shares of beneficial interest in each Master Fund.

It is also anticipated that each Master Fund will enter into a management agreement with Management, pursuant to which Management will provide investment management and general administrative services to each Master Fund. In addition, each Master Fund will contract for transfer agency services, custodial services and other operational services. Each Master Fund will pass these operational fees, as well as other expenses incurred, on to the Shareholders on a pro rata basis so that each Shareholder will bear the portion of the fees and other expenses that will be equal to such Shareholder's percentage interest in the outstanding shares of the Master Fund.

Each Master Fund will be operated by fiduciaries, designated as "Trustees" under the Declaration of Trust. The Trustees will have legal title over the property of the Master Funds, and general control over the business operation of the Master Funds. The Trustees will have the power to conduct, operate and carry on the business of an investment company, in accordance with the provisions of the Declaration of Trust.

Under the Declaration of Trust for each Master Fund, Shareholders holding, in the aggregate, ten percent of the outstanding certificates of beneficial interest of all series and classes entitled to vote may request a meeting for the purpose of taking action upon any matter requiring the vote or authority of the Shareholders. Shareholders will have the power to vote, with or without cause, for the election or removal of Trustees. Shareholders will also have the power to vote on any investment advisory contract entered into by the Trustees and on any other matter that may be required by reason of registration with the Securities and Exchange Commission. And, to the same extent as stockholders of a Massachusetts corporation, Shareholders will have the power to vote as to whether or not a court action, proceeding or claim should or should not be brought or maintained derivatively or as a class action on behalf of the Master Fund or the Shareholders. Finally, Shareholders will have the power to vote for the continuation or termination of the Master Fund, and their vote will be required to authorize amendments to the Declaration of Trust.

II. Discussion.

The criteria for determining whether an entity formed under a declaration of trust is a partnership or a trust for Massachusetts tax purposes depends upon the manner in which the trustees' conduct the affairs of the enterprise. See Letter Rulings 93-11; 93-12. "If [the trustees] act as principals and are free from the control of the certificate holders, a trust is created; but if they are subject to the control of the certificate holders, it is a partnership." Id. (quoting Frost v. Thompson, 219 Mass. 360, 365 (1914)). Therefore, the Shareholders' participation in and control over the operation of each Master Fund will determine whether the Master Funds will be treated as partnerships or trusts for Massachusetts tax purposes.

Although the Trustees will have legal title to the property of the Master Funds and will have general control over the business operations of the Master Funds, they will not be acting as principals of the Master Funds. Shareholders will retain control over the Master Funds, in general, and the Trustees, in particular, under their voting powers, as provided by the Declaration of Trust and described above. The Declarations of Trust of each Master Fund, therefore, will establish a framework for Shareholder participation in and oversight of each Master Fund so that the Trustees will be under the control of the Shareholders.

Accordingly, we rule that, for Massachusetts tax purposes, the Master Funds will be partnerships under G.L. c. 62, § 17, and that the Shareholders will be partners in such Master Funds.

Very truly yours,

/s/Mitchell Adams

Mitchell Adams
Commissioner of Revenue

MA:HMP:jd

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1 You expect the Internal Revenue Service will rule that each Master Fund will be a partnership for federal tax purposes on the grounds that each Master Fund lacks the corporate characteristics of free transferability of interests and of continuity of life.